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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

NICK A. ALDEN, Plaintiff and Appellant, v. VANESSA ANGEL, Defendant and Respondent.	B246906 (Los Angeles County Super. Ct. No. BC487906)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard E. Rico, Judge. Reversed.

Nick A. Alden, in pro. per.; and The Law Offices of Lorne M. Pollock for Plaintiff and Appellant.

Lerman Pointer & Spitz and Jeffrey Spitz for Defendant and Respondent.

INTRODUCTION

Nick A. Alden appeals from a judgment of dismissal, following an order sustaining a demurrer without leave to amend to his first amended complaint (FAC). He contends (1) that the trial court erred in confirming an arbitration award in favor of respondent Vanessa Angel and against him, and (2) that the court erred in determining that his cause of action for breach of contract was precluded by the arbitration award under the doctrine of res judicata. For the reasons set forth below, we reverse.

FACTUAL AND PROCEDURAL HISTORY

Respondent retained appellant, an attorney, for assistance in connection with a foreclosure. The written retainer agreement between the parties provided that in return for representing respondent in a "dispute with [her] lender," respondent would pay appellant a nonrefundable retainer of $20,000, plus $1,750 for the month of May 2011, and $3,500 monthly thereafter for the duration of the representation. In addition, if the representation resulted in an award of damages, respondent would pay appellant 20 percent of the award. Respondent also agreed to pay costs and expenses, including filing fees, out-of-town travel expenses, and expert fees.[1]

In November 2011, respondent filed for fee arbitration under the Mandatory Fee Arbitration Act (MFAA), Business and Professions Code section 6200 et seq.[2]

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[1] The retainer agreement also provided certain advisements, including that appellant did not maintain "error and omissions (malpractice) Insurance applicable to the services that [he would] be rendering."

[2] All further statutory citations are to the Business and Professions Code, unless otherwise stated.

She elected binding arbitration; appellant did not. Respondent sought a refund of $18,750; she had paid appellant $28,750 for his services through July 2011. Respondent claimed that "she had to initiate settlement on her own," that "the work [appellant] performed [was] less than what was paid," and that appellant did not do the work himself. Appellant countered that "the fee arrangement authorized the fee collected," that "the work was performed," and that "a restructuring of the loan was achieved saving [respondent] about $300,000." Appellant also claimed respondent owed him "monthly periodic payments from July to October 2011," but the arbitrator found that he had not pled that claim.

On June 13, 2012, the arbitrator issued an award in favor of respondent and against appellant. The arbitrator determined that the fee charged was "clearly unconscionable," as there was "no such thing as a [nonrefundable] retainer for this type of matter" and "[t]he fee arrangements were . . . unclear, confusing and one-sided favoring [appellant]." The arbitrator found that appellant had never provided respondent with an itemized breakdown of time spent and costs paid despite a written demand, that an associate -- who had a lower hourly billing rate -- had represented respondent at a court hearing, that another employee had worked on appellant's case after the lender declared a default, and that appellant had caused respondent to incur additional monthly payments by delaying the filing of a complaint against the lender. The arbitrator also found that the settlement negotiations were initiated by respondent's husband, and that the dispute was resolved according to the husband's proposed terms. On these facts, the arbitrator determined that respondent was entitled to a refund of $18,750, plus the arbitration filing fee, for a total of $19,875. Respondent was also awarded interest on the refund amount of $18,750 from November 17, 2011.

The written arbitration award was mailed to both parties on June 14, 2012. A "Notice of Your Rights After Fee Arbitration," required to be mailed with the written award, informed the parties that a nonbinding arbitration award would become binding, unless a party filed a request for a trial within 30 days after service of the award. The notice also stated that a party "should" file form ADR-104 to reject the arbitration award and request a trial. Form ADR-104, entitled "Rejection Of Award And Request For Trial After Attorney-Client Fee Arbitration," states that it was "Approved for Optional Use" by the Judicial Council of California.

On July 6, 2012, appellant filed a form complaint against respondent, alleging a cause of action for breach of contract. The complaint alleged that respondent failed to pay appellant "fees for . . . legal services and the costs advanced by [appellant] in the amount of $154,459.00." The retainer agreement was attached to the form complaint. The complaint referenced neither the prior arbitration nor the arbitration award. In an attached form civil case cover sheet addendum, appellant requested a jury trial on his breach of contract cause of action.

On September 28, 2012, respondent demurred to the complaint. She argued the complaint failed to state a cause of action for breach of contract, as (1) the complaint was barred by a prior arbitration ruling on the same contract, and (2) the contract at issue was unconscionable and unenforceable as a matter of law. In an accompanying request for judicial notice, respondent attached a copy of the arbitration award. Respondent also filed a supplemental request for judicial notice of a September 25, 2012 letter from the State Bar to appellant, stating that the State Bar was seeking to enforce the arbitration award.

On October 4, 2012, appellant filed a form ADR-104, rejecting the arbitration award and requesting a trial. Appellant asserted that he had complied with the 30-day filing requirement, as he had filed a civil action within 30 days of receiving notice of the award.

The same day, respondent moved to strike appellant's form ADR-104, contending that it was untimely filed. Respondent also filed a petition to confirm the arbitration award. In the petition, she asserted that the award was binding under sections 6203 and 6204, because (1) more than 30 days had passed since notice of the award was mailed, and (2) no party had filed a rejection of the award and a request for trial within that time period.

On October 11, 2012, appellant filed an FAC, also on a form complaint. The FAC added the following general allegations: "Plaintiff rejects the attorney-client fee arbitration award between Plaintiff and Defendant, served on June 13, 2012, and requests a trial de novo in court to resolve the dispute over attorney fees and costs." Similar allegations were added to the breach of contract cause of action.

The next day, appellant filed objections to respondent's petition to confirm the arbitration award. He contended that his original complaint and the FAC satisfied the requirements of sections 6203 and 6204, as by commencing the instant action, he had rejected the arbitration award and had requested a trial de novo. Appellant also contended that the arbitration award could not be confirmed before the demurrer was resolved.

Respondent filed a reply, contending that the complaint and FAC did not timely challenge the arbitration award, and therefore the award became binding on July 13, 2012. She also contended the arbitration award barred any claim that she owed appellant any monies for his legal services.

On November 5, 2012, following a hearing, the superior court granted respondent's petition to confirm the arbitration award. The court determined that the complaint and FAC did not put respondent on notice that appellant was challenging the arbitration award. The court first noted that the facts were similar to those in *Shiver, McGrane & Martin v. Littell* (1990) 217 Cal.App.3d 1041 (*Shiver*), wherein the appellate court had held that "because [the] suit failed to mention the arbitration award . . . , [it] did not give adequate notice that the award was under challenge." The superior court found that in the instant matter, appellant filed a timely breach of contract action against respondent seeking unpaid legal fees, but "that action also did not mention the arbitration award."

The superior court further noted that "Alden's complaint seeks recovery of 'fees for Plaintiff's legal service and the costs advanced by Plaintiff.'" The court determined that this claim was not addressed in the arbitration. "Rather, the arbitration only addressed Angel's claim that, out of the legal fees and retainer fee that were paid, she was entitled to a partial refund due to the fact that 'the work performed [was] less than what was paid.'" The court concluded that "[i]t [was] unclear from Alden's bare-bones complaint asking for $154,459 in damages whether Alden's claim for unpaid legal services overlaps at all with the arbitrator's reimbursement of $19,875 to Angel for legal fees paid. On these grounds, the filing of the complaint did not put Angel on notice that Alden was challenging the arbitration award."

Appellant moved for reconsideration on both procedural and substantive grounds of the trial court's ruling confirming the arbitration award. Respondent filed objections to the motion for reconsideration. She also demurred to the FAC on the same grounds as her demurrer to the original complaint -- that the claim for

breach of contract was barred by the arbitration award, and that the contract at issue was unconscionable and unenforceable as a matter of law.

On December 4, 2012, the superior court granted appellant's motion for reconsideration, but denied the "underlying motion to vacate." The next day, the court sustained respondent's demurrer to the FAC. The court determined that "[a]s Plaintiff's claim for unpaid legal fees and costs was within the scope of the Arbitration, related to the subject-matter and relevant to the issues such that it could have been raised in the Arbitration, it is now barred by the doctrine of res judicata."

A judgment confirming the arbitration award, sustaining the demurrer without leave to amend, and dismissing the FAC was entered January 22, 2013. Appellant timely appealed.

DISCUSSION

Appellant contends the trial court erred, as a matter of law, in confirming the arbitration award and in sustaining the demurrer without leave to amend. Our review is de novo for several reasons. First, we review de novo a trial court's order confirming an arbitration award. (*Glaser, Weil, Fink, Jacobs & Shapiro, LLP v. Goff* (2011) 194 Cal.App.4th 423, 433.) Second, we review de novo a trial court's ruling on a demurrer. (*Liska v. The Arns Law Firm* (2004) 117 Cal.App.4th 275, 281 (*Liska*).) Finally, as determining the validity of the trial court's rulings requires us to interpret the MFAA, we independently review those rulings. (See, e.g., *Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1300 [reviewing an order de novo, as its validity depended upon statutory construction].)

A. The Mandatory Fee Arbitration Act (MFAA)

Respondent sought and obtained an arbitration award pursuant to the MFAA. The MFAA "provides a procedure by which a client may resolve fee disputes with his or her attorney efficiently and without the necessity and expense of hiring a second attorney." (*Liska*, *supra*, 117 Cal.App.4th at p. 281.) Arbitration under the MFAA is voluntary for the client, and mandatory for the attorney if commenced by the client. (§ 6200, subd. (c); accord *Loeb v. Record* (2008) 162 Cal.App.4th 431, 442 (*Loeb*).)[3]

The MFAA covers only disputes concerning "fees, costs, or both charged . . . by members of the [bar]." It does not apply to "[c]laims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct." (§ 6200, subd. (b)(2); accord *Loeb*, *supra*, 162 Cal.App.4th at p. 442.) In resolving the fee dispute, an arbitrator may award "the client a refund of unearned fees, costs, or both previously paid to the attorney." (§ 6203, subd. (a).)

"The parties may agree in writing to be bound by the award . . . at any time after the dispute over fees, costs, or both, has arisen. In the absence of such an agreement, either party shall be entitled to a trial after arbitration if sought within 30 days, pursuant to subdivisions (b) and (c) . . . ." (§ 6204, subd. (a).) Subdivision (b) of section 6204 provides that if there is an action pending, "the trial after arbitration shall be initiated by filing a rejection of [the] arbitration award and request for trial after arbitration in that action within 30 days after service of

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[3] In addition, before commencing an action or other proceeding to recover fees, costs, or both against a client, the attorney must provide written notice to the client of "the client's right to arbitration under this article. Failure to give this notice shall be a ground for the dismissal of the action or other proceeding." (§ 6201, subd. (a).)

notice of the award." Subdivision (c) provides that if no action for fees is pending, "the trial after arbitration shall be initiated by the commencement of an action in the court having jurisdiction over the amount of money in controversy within 30 days after service of notice of the award. After the filing of such an action, the action shall proceed in accordance with the provisions . . . of the Code of Civil Procedure, concerning civil actions generally." (§ 6204, subd. (a); see also *Schatz v. Allen Matkins Leck Gamble & Mallory LLP* (2009) 45 Cal.4th 557, 572-573 [right to trial granted in the MFAA does not preclude a demurrer or summary judgment motion dismissing action].)[4]

"Even if the parties to the arbitration have not agreed in writing to be bound, the arbitration award shall become binding upon the passage of 30 days after service of notice of the award, unless a party has, within the 30 days, sought a trial after arbitration pursuant to Section 6204. . . . If no action is pending in any court, the award may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the arbitration award." (§ 6203, subd. (b).) "[T]he burden [is] on the party dissatisfied with the arbitration award to take steps to prevent the award from becoming binding." (*Loeb*, *supra*, 162 Cal.App.4th at p. 443.)[5]

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[4] The provisions to request a trial after arbitration "were incorporated into the statute in response to attorney concerns that compulsory arbitration would otherwise deny them a jury trial on their claims relating to fees." (*Maynard v. Brandon* (2005) 36 Cal.4th 364, 373.)

[5] Aside from seeking a trial in court, a valid request for a proceeding other than trial may prevent an award under the MFAA from becoming final. For example, "[i]f the parties have agreed in writing to binding arbitration, a demand for arbitration within 30 days of service of the MFAA award is a proceeding that prevents finality of the MFAA award." (*Rosenson v. Greenberg Glusker Fields Claman & Machtinger LLP* (2012) 203 Cal.App.4th 688, 692.)

Finally, "[e]xcept as provided in . . . section [6204], the award and determinations of the arbitrators shall not be admissible nor operate as collateral estoppel or res judicata in any action or proceeding." (§ 6204, subd. (e).) Thus, where an award has become binding, aside from specific factual determinations not applicable in the instant matter, the parties are bound only by the "award." (§ 6204, subd. (a); *Liska*, *supra*, 117 Cal.App.4th at pp. 285-286 [Legislature "limited the binding effect [of the arbitration award] to which the parties might agree to the award itself -- i.e., to the amount of attorney fees (and/or costs) to which the attorney is entitled (or must refund)."].)

B. Confirmation of Arbitration Award

As set forth in section 6203, subdivision (b), a court may confirm an arbitration award under the MFAA if no party has requested a trial after the arbitration within 30 days of service of the award. (See § 6203, subd. (b) ["If no action is pending in any court, the award may be confirmed . . . by petition to the court . . . ."].) Here, the trial court confirmed the arbitration award after determining that appellant's original complaint failed to meet the requirements of section 6204 to seek trial de novo on the fee dispute at issue. Specifically, the court determined that the complaint did not provide adequate notice that appellant was challenging the arbitration award. We disagree.

The fee arbitration occurred after appellant's legal representation of respondent had ended. Both parties agree that the arbitration resolved all fee disputes related to the legal representation. At the time that the arbitration award was served on the parties, there was no action for fees pending. Thus, under the MFAA, to prevent the arbitration award from becoming a binding and confirmable adjudication of the fees due, appellant was required only to commence an action

regarding those fees in superior court within 30 days after service of the arbitration award. (See § 6204, subd. (c) [where no action for fees is pending, "the trial after arbitration shall be initiated by the commencement of an action in the court having jurisdiction over the amount of money in controversy within 30 days after service of notice of the award"].)

In order to comply with the requirements of section 6204, subdivision (c), appellant's action must have informed respondent that appellant was challenging the arbitration award. (*Shiver*, *supra*, 217 Cal.App.3d at p. 1045.) For example, filing an action seeking to recover on a claim unrelated to the legal representation would not have put respondent on notice. However, the MFAA does not specify any form that must be used. Thus, although form ADR-104 would satisfy the requirements of section 6204, subdivision (c), it is optional, as the form itself states.

Respondent contends that the failure to mention the arbitration award or fee arbitration in the complaint was fatal. The MFAA, however, does not specify any language that must be included in the complaint. Rather, the only issue is whether the complaint sufficiently informed respondent that appellant was rejecting the arbitration award and requesting a trial de novo on the fee dispute. Here, appellant's original complaint sought "recovery of 'fees for Plaintiff's legal service and the costs advanced by Plaintiff'" in the amount of $154,459. He attached the retainer agreement, and it is undisputed that there was only one legal representation at issue. Appellant also sought a jury trial on his cause of action. Respondent acknowledges -- and has consistently argued -- that the fee arbitration addressed *all* fee disputes related to appellant's legal representation. Because appellant's original complaint clearly sought fees in connection with the only representation he had ever provided respondent -- the very representation that was the subject of the

arbitration -- it adequately apprised respondent that appellant was challenging the arbitration award and seeking a trial on his entitlement to fees.[6]

Shiver, on which respondent relies, is inapposite. There, a law firm and its clients entered into fee arbitration under the MFAA. The law firm prevailed. One of the clients then sued a member of the firm for malpractice. (*Shiver*, *supra*, 217 Cal.App.3d at p. 1044.) The appellate court found that the malpractice action did not satisfy the requirements of section 6204, subdivision (c), as it did not adequately inform the law firm that the clients were challenging the arbitration award. The court noted that the action in the superior court was for malpractice, not for legal fees, and that the parties were not the same parties that had participated in the arbitration. (*Shiver*, at p. 1045; see also § 6200, subd. (b)(2) [MFAA does not cover "[c]laims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct."].) The court further noted that the arbitration was not mentioned in the complaint and "there [was] no indication that the fees challenged in the malpractice action [were] the same fees awarded to respondent by the arbitrator." (*Shiver*, *supra*, 217 Cal.App.3d at p. 1045.) In contrast, here, appellant sought to recover legal fees that were disputed in the fee arbitration, the parties were identical, and the fees were the same fees that the arbitrator had determined were not owed by respondent. Thus, although appellant's complaint did not reference a fee dispute or the fee arbitration, it adequately put respondent on notice that

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[6] Respondent might have argued that the arbitration addressed only those fees respondent owed appellant for his services from May through July 2011, and that appellant's form complaint seeking a much larger sum failed to put her on notice that he was challenging the arbitration award. However, respondent has insisted throughout that the arbitration encompassed and resolved all disputes relating to appellant's entitlement to fees, and at oral argument, her counsel disavowed any suggestion that the arbitration was limited in scope.

appellant was challenging the arbitration award. Accordingly, the award did not become binding.

An arbitration award under the MFAA cannot be confirmed if a party to the arbitration has rejected the award and requested a trial de novo within 30 days after service of notice of the award. (§ 6203, subd. (b).) Appellant's original complaint rejected the arbitration award and sought a trial de novo on the fee dispute. Thus, the arbitration award cannot be confirmed. Accordingly, the trial court erred in determining the arbitration award was binding, and confirming the award.

C. Demurrer Without Leave to Amend

The trial court sustained a demurrer without leave to amend to the FAC, determining that "[a]s Plaintiff's claim for unpaid legal fees and costs was within the scope of Arbitration, related to the subject-matter and relevant to the issues such that it could have been raised in the Arbitration, it is now barred by the doctrine of res judicata." We disagree.

As the arbitration award was nonbinding, it had no res judicata effect. Moreover, section 6204 states that, "[e]xcept as provided in this section, the award and determinations of the arbitrators shall not be admissible nor operate as collateral estoppel or res judicata in any action or proceeding." (§ 6204, subd. (e).) None of the exceptions provided in section 6204 applies here. Accordingly, the trial court erred in sustaining the demurrer without leave to amend.[7]

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[7] Respondent requests that we determine that the retainer agreement is unconscionable and therefore unenforceable as a matter of law. We decline to do so, as the trial court did not address this issue, and the record on appeal is not sufficiently developed for us resolve the issue.

DISPOSITION

The judgment is reversed. Appellant is entitled to his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.